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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,125	06/15/1999	PHYLLIS LEITHEM	0077079-0057	4961

31013 7590 03/24/2005

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EXAMINER	
STEPHENS, JACQUELINE F	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/334,125
Filing Date: June 15, 1999
Appellant(s): LEITHEM ET AL.

Phyllis Leithem
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/10/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 61 and 62 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,083,575	Novak	9-1933
3,658,064	Pociluyko	4/1972

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pociluyko USPN 3658064 in view of Novak USPN 2083575.

As to claim 61, Pociluyko discloses an absorbent article comprising at least one fluid permeable topsheet layer **51** and at least one substantially fluid impermeable backsheet layer **10** and a sublayer material **50** between the topsheet layer and the backsheet layer (Figures 6 and 7). The sublayer material **50** of Pociluyko comprises a fluff layer **52**. Pociluyko discloses fluff pulp is desired because of its low cost and high absorptive capacity (col. 4, lines 44-54). Pociluyko is silent as to the method of manufacturing the fluff pulp.

Novak discloses a method for making fluff pulp capable of being used for personal hygiene articles, due to its soft and absorbent characteristics (Novak page 2, col. 1, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Pociluyko with a fluff pulp made by the method taught in Novak. Doing so would provide an absorbent product containing fluff pulp material that 1) is very soft, absorbent, and easily saturated; and 2) will not deteriorate in storage and can be conveniently shipped to distant point in the same way as in the case of commercial wet pulp (Novak page 1, col. 1, lines 6-12;page 2, col. 2, lines 21-26).

The method of making the absorbent article of Pociluyko/Novak comprises treating a wood fiber pulp containing wood fibers with a base at room temperature (Novak page 1, col. 1, lines 12-40), which is included in the claimed temperature range of 15° – 60° C. Novak further discloses fluffing the treated wood fiber pulp to form an

absorbent sublayer material comprised of fluffed base-treated wood fiber pulp (Novak page 1, col. 2, line 54 through page 2, col. 1, line 20; page 2, col. 1, line 75- col. 2, line 11). The treated wood fiber pulp of Pociluyko/Novak is not subjected to chemical crosslinking.

As to claim 62, Pociluyko/Novak discloses the sublayer material contains 35-100% fluff (Pociluyko col. 4, lines 54-57). At 100% fluff, the sublayer would contain 0% wood fiber pulp, which is within the claimed range.

(11) Response to Argument

Applicant's arguments filed 6/10/04 have been fully considered but they are not persuasive. Applicant argues the pulp product of Novak is a wet-laid felt and not a fluff material as the Examiner has alleged. Applicant is directed to page 1, col. 2, line 54 through page 2, col. 1, line 7 where Novak discloses circulating the stock in a beater engine and again on page 2, col. 1, line 68 through col. 2, line 11, where Novak discloses beating the stock. The process of beating the pulp equates to fluffing. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., dry shredded fluff) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues one would not combine the 'felt' of Novak for the fluff material of Pocilluyko to produce the presently claimed invention. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Novak teaches a method of making a fluff pulp that is highly absorbent and soft (Novak page 2, col. 1, lines 15-20), and, Pociluyko teaches a fluff pulp with those characteristics is desired (Pociluyko col. 4, lines 44-54). It would have been obvious to treat the fluff pulp of Pociluyko in a manner as that disclosed in Novak for the benefits that both references disclose.

In response to applicant's argument based upon the age of the references (Novak), contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Applicant further argues the prior art teaches away from the use of pulp which is not chemically cross linked, however, applicant has not indicated in the prior art reference(s) where the disclosure teaches away from the present invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jacqueline F Stephens
Examiner
Art Unit 3761

March 16, 2005

Conferees:

Angela Sykes,
Supervisory Patent Examiner
Art Unit 3762

Larry Schwartz,
Supervisory Patent Examiner
Art Unit 3761

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